

1 MR. MERRITT: No, sir. This may be much ado  
2 about nothing. We've talked about the process for  
3 exchanging deposition designations in advance of the  
4 hearing and counter-designations.

5 Our only point is if within the constraints  
6 of a hearing that only lasts a couple of days, there  
7 are some 30(b)(6) or party witnesses whose testimony  
8 we might want to proffer to the record before we rest,  
9 that we be permitted to do that.

10 THE COURT: Before you rest?

11 MR. MERRITT: Yes, sir. We're not going to  
12 close our case and then try to make a --

13 THE COURT: All evidence will be presented at  
14 the hearing. And I don't want any after the hearing.  
15 Then everybody -- there are consequences associated  
16 with resting and whether you meet the burden, etc.,  
17 but just beyond that, fundamental fairness dictates  
18 that when you've had your shot, they know what target  
19 you've hit, and they can decide to sit down and do  
20 nothing if they want to or they can decide the scope  
21 of what they want to put on. So that requires that it  
22 all be put in in accord with the rules.

23 If it comes in under the deposition  
24 procedures that are spelled out in Rule 30, then so be  
25 it or in interrogatory answers or requests for

